

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Gabriel Cartagena, Plaintiff, -v- Sixth Avenue West Associates LLC, Defendant.	Civ. Action #: <u>Complaint</u> Jury Trial Demanded
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Plaintiff Gabriel Cartagena (“Plaintiff” or “Cartagena”), by Abdul Hassan Law Group, PLLC, his attorney, complaining of Defendant Sixth Avenue West Associates LLC (“Defendant”), respectfully alleges as follows:

NATURE OF THE ACTION

1. Plaintiff alleges that he was employed by Defendant and pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216 (b), he is: (i) entitled to unpaid overtime wages from Defendant for working more than forty hours in a week and not being paid an overtime rate of at least 1.5 times his regular rate for such hours over forty in a week in violation of 29 U.S.C. § 207; (ii) entitled to unpaid minimum wages from Defendant for working and not being paid at a rate of at least the applicable federal minimum wage rate for each hour he worked for Defendant in a week in violation of 29 U.S.C. § 206 – for example, Plaintiff was not paid any wages for approximately the last 10 days of work; and (iii) entitled to maximum liquidated damages and attorneys' fees pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. including 29 U.S.C. § 216(b).

2. Plaintiff further complains pursuant to New York Labor Law, that he is: (i) entitled to unpaid overtime wages from Defendant for working more than forty hours in a week and not being paid an overtime rate of at least 1.5 times his regular rate for such hours over forty in a week in violation of 12 NYCRR § 142, 141; (ii) entitled to unpaid minimum wages from Defendant for working and not being paid at a rate of at least the applicable New York State minimum wage rate for each hour he worked for Defendant in a week in violation of 12 NYCRR § 142, 141 – for example, Plaintiff was not paid any wages for the last 10 days of

work; is entitled to maximum liquidated damages and attorneys fees, pursuant to the New York Minimum Wage Act ("NYMWA"), N.Y. Lab. Law §§ 650 et seq., including NYLL § 663, and the regulations thereunder.

3. Plaintiff is also entitled to recover his unpaid wages, overtime wages, minimum wages, wage deductions, under Article 6 of the New York Labor Law including Section 191, 193, and compensation for not receiving notices and statements required by NYLL 195, under Article 6 of the New York Labor Law and is also entitled to maximum liquidated damages – including maximum liquidated damages on all wages paid later than weekly, interest, and attorneys' fees pursuant to Section 198 of the New York Labor Law.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1337. In addition, the Court has jurisdiction over plaintiff's claim under the Fair Labor Standards Act pursuant to 29 U.S.C. § 216 (b).
5. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1331(b) and 29 USC § 216(b).
6. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202.

THE PARTIES

7. Plaintiff Gabriel Cartagena ("Plaintiff" or "Cartagena") is an adult, over eighteen years old, who currently resides in Queens County in the State of New York.
8. Upon information and belief and all times relevant herein, Defendant Sixth Avenue West Associates LLC ("SAWA") was a New York limited liability company.
9. At all times relevant herein, Defendant controlled the employment of Plaintiff and was

responsible for hiring, firing, scheduling, controlling, managing, supervising, and record-keeping as to Plaintiff's employment, among other employment functions, and performed such employment functions as to Plaintiff.

10. Upon information and belief, Defendant SAWA operated a principal place of business in New York County, New York located at 13 East 16th Street, New York, NY 10003, where Plaintiff was employed.

11. At all times relevant herein, Plaintiff was employed by Defendant.

STATEMENT OF FACTS

12. Upon information and belief, and at all relevant times herein, Defendant was engaged in the business of building management and ownership within New York state.

13. Upon information and belief, and at all relevant times herein, Defendant employed about 30 or more employees.

14. Plaintiff was employed by Defendant from on or about February 7, 2023 to on or about March 8, 2023.

15. At all times relevant herein, Defendant employed Plaintiff as a manual worker handyman and Plaintiff performed manual work such as maintenance and repairs in Defendant's multi-story building throughout his work day.

16. At all times relevant herein, Plaintiff was an hourly employee of Defendant and his last regular hourly rate of pay was about \$30.00 an hour and Plaintiff was not paid any wages for each and all hours worked in excess of forty in each week during his employment with Defendant.

17. At all times relevant herein, Plaintiff worked about 50-55 or more hours each week, 5 days each week.

18. At all times relevant herein and for at least the last 10 days of Plaintiff's employment with Defendant, Defendant failed and willfully failed to pay Plaintiffs a rate of at least the applicable federal Fair Labor Standards Act ("FLSA") and the applicable New York State minimum wage rate – Plaintiff was not paid any wages for this approximately 10-day period of work that he performed – a total of about 75 hours including about 25 overtime hours.
19. A more precise statement of the hours and wages may be made when Plaintiff obtains the wage and time records Defendant was required to keep under the FLSA and NYLL. *Accurate* copies of Plaintiff's wage and time records that Defendant was required to keep pursuant to 29 USC 211, 29 CFR 516 and NYLL 195, 12 NYCRR 142.2-6 are incorporated herein by reference.
20. At all times relevant herein and for the time Plaintiff was employed by Defendant, Defendant failed and willfully failed to pay Plaintiff an overtime rate of at least 1.5 times the applicable New York State Minimum Wage rate and 1.5 times his regular rate of pay for all hours worked in excess of forty hours in a week.
21. At all times relevant herein and for at least the last 10 days of his employment with Defendant, Defendant failed and willfully failed to pay Plaintiff at a rate of at least the applicable federal and New York State Minimum Wage rate.
22. At all times relevant herein, Defendant did not provide Plaintiff with the notice(s) required by NYLL 195(1). See i.e. *Alonso Vazquez v. Azoulay*, 834 F. App'x 653, 654 (2d Cir. 2021)(“For example, the purported hiring notice Azoulay cites lacks required information about the employer (such as contact information and the corporate or business name), as well as required information about tip credit or tip policy. Similarly, Azoulay relies on purported wage notices that lack required information regarding all hours worked and wages paid. See Appellee Br. at 16-21.”).
23. At all times relevant herein, Defendant did not provide Plaintiff with the statement(s) required by NYLL 195(3) - the statements provided to Plaintiff did not reflect all hours worked, nor all wages earned, among other deficiencies. See i.e. *Alonso Vazquez v. Azoulay*,

834 F. App'x 653, 654 (2d Cir. 2021)(“For example, the purported hiring notice Azoulay cites lacks required information about the employer (such as contact information and the corporate or business name), as well as required information about tip credit or tip policy. Similarly, Azoulay relies on purported wage notices that lack required information regarding all hours worked and wages paid. See Appellee Br. at 16-21.”).

24. Upon information and belief, and at all times relevant herein, Defendant had revenues and/or transacted business in an amount exceeding \$500,000 annually.
25. At all times relevant herein, Defendant conducted business with vendors and other businesses outside the State of New York.
26. At all times relevant herein, Defendant conducted business in interstate commerce involving the purchase of equipment, materials and other essential supplies for its business.
27. Defendant as a regular part of its business, makes payment of taxes and other monies to agencies and entities outside the State of New York.
28. Defendant as a regular part of its business, engaged in credit card transactions involving banks and other institutions outside the state of New York.
29. Upon information and belief, and at all times relevant herein, Defendant and Plaintiff utilized the instrumentalities of interstate commerce such as the United States mail, internet electronic mail, messaging, websites and telephone/cellphone systems as a regular/daily part of the operation of Defendant and Plaintiff’s employment with Defendant.
30. Upon information and belief, and at all times relevant herein, Defendant utilized the instrumentalities of interstate commerce such as the United States mail, internet electronic mail and telephone systems.
31. Upon information and belief, and at all relevant times herein, Defendant failed to display

federal, and state minimum wage/overtime posters as required by the FLSA and NYLL (29 CFR 516.4; 12 NYCRR 142-2.8), and Defendant failed to notify Plaintiff of his federal and state minimum wage and overtime rights and failed to inform Plaintiff that he could seek enforcement of such rights through the government enforcement agencies.

32. The circumstances of Defendant's termination of Plaintiff's employment and other aspects and conditions of Plaintiff's employment are under review and investigation and Plaintiff may assert wrongful termination and other claims at a later time.
33. "Plaintiff" as used in this complaint refers to the named Plaintiff.
34. The "present" or the "present time" as used in this complaint refers to the date this complaint was signed.

AS AND FOR A FIRST CAUSE OF ACTION

FAIR LABOR STANDARDS ACT - 29 U.S.C 201 et Seq. - Unpaid OT + Min Wage

35. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1 through 34 above as if set forth fully and at length herein.
36. At all times relevant to this action, Plaintiff was employed by Defendant within the meaning of the FLSA – 29 USC 201 et Seq.
37. At all times relevant to this action, Plaintiff was engaged in commerce and/or in the production of goods for commerce and/or Defendant constituted an enterprise(s) engaged in commerce within the meaning of 29 U.S.C. §§ 206, 207.
38. At all times relevant herein, Defendant transacted commerce and business in excess of \$500,000.00 annually or had revenues in excess of \$500,000.00 annually.
39. At all times relevant herein, Defendant failed and willfully failed to pay Plaintiff overtime compensation at rates of at least 1.5 times his regular rate of pay for each hour worked in

excess of forty hours in a work week, in violation of 29 U.S.C. § 207.

40. At all times relevant herein, Defendant failed and willfully failed to pay Plaintiff minimum wage compensation at rates of at least the federal applicable minimum wage rate for each hour in a work week, in violation of 29 U.S.C. § 206.

Relief Demanded

41. Plaintiff is entitled to recover from Defendant his unpaid overtime wages, minimum wages, maximum liquidated damages, attorney's fees, and costs of the action, pursuant to 29 U.S.C. § 216(b).

AS AND FOR A SECOND CAUSE OF ACTION

NYLL 650 et Seq. and 12 NYCRR 142, 141, etc. (Unpaid OT + Min)

42. Plaintiff alleges, and incorporates by reference the allegations in paragraphs 1 through 40 above as if set forth fully and at length herein.

43. At all times relevant to this action, Plaintiff was employed by Defendant within the meaning of the New York Labor Law, §§ 2 and 651 and the regulations and wage orders thereunder including 12 NYCRR § 142, 141.

44. At all times relevant herein, Defendant failed and willfully failed to pay Plaintiff overtime compensation at rates of at least 1.5 times his regular rate of pay for each hour worked in excess of forty hours in a week, in violation of the New York Minimum Wage Act and its implementing regulations and wage orders. N.Y. Lab. Law §§ 650 et seq., including 12 NYCRR § 142-2.2, 141-1.4.

45. At all times relevant herein, Defendant failed and willfully failed to pay Plaintiff at a rate of at least the NYS applicable minimum wage rate for each and all hours worked in a work-week, in violation of the New York Minimum Wage Act and its implementing regulations and wage orders. N.Y. Lab. Law §§ 650 et seq., including 12 NYCRR § 142-2.1, 141-1.2.

Relief Demanded

46. Plaintiff is entitled to recover from Defendant, his unpaid overtime wages, minimum wages,

prejudgment interest, maximum liquidated damages, reasonable attorneys' fees, and costs of the action, pursuant to N.Y. Labor L. § 663(1) and the regulations thereunder.

AS AND FOR A THIRD CAUSE OF ACTION

NYLL § 190, 191, 193, 195 and 198

47. Plaintiff alleges and incorporates each and every allegation contained in paragraphs 1 through 51 above with the same force and effect as if fully set forth at length herein.
48. At all times relevant to this action, Plaintiff was employed by Defendant within the meaning of the New York Labor law, §§ 190 et seq., including §§ 191, 193, 195 and 198 and the applicable regulations thereunder.
49. At all times relevant herein, Defendant failed and willfully failed to provide Plaintiff with the notice(s) required by NYLL § 195(1) – Plaintiff is therefore entitled to and seeks to recover in this action the maximum recovery for this violation, plus attorneys' fees and costs pursuant to NYLL § 198 including NYLL § 198(1-b), as well as an injunction directing Defendant to comply with NYLL § 195(1).
50. At all times relevant herein, Defendant failed and willfully failed to provide Plaintiff with the statement(s) required by NYLL § 195(3) – Plaintiff is therefore entitled to and seeks to recover in this action the maximum recovery for this violation, plus attorneys' fees and costs pursuant to NYLL § 198 including NYLL § 198(1-d), as well as an injunction directing Defendant to comply with NYLL § 195(1).

Relief Demanded

51. Plaintiff is entitled to recover from Defendant his entire unpaid wages, including his unpaid overtime wages, minimum wages, non-overtime wages, wage deductions, maximum liquidated damages, prejudgment interest, maximum recovery for violations of NYLL 195(1) and NYLL 195(3), reasonable attorneys' fees, and costs of the action, pursuant to N.Y. Labor Law § 190 et seq. including § 198.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

52. Declare Defendant to be in violation of the Plaintiff's rights under the Fair Labor Standards Act, Article 6 of the New York Labor Law, the New York Minimum Wage Act, and the Regulations thereunder;
53. As to the **First Cause of Action**, award Plaintiff his unpaid overtime wages, minimum wages, due under the FLSA, together with maximum liquidated damages, costs and attorney's fees pursuant to 29 USC § 216(b);
54. As to the **Second Cause of Action**, award Plaintiff his unpaid overtime wages, minimum wages, due under the New York Minimum Wage Act and the Regulations thereunder including 12 NYCRR §§ 142, 141 together with maximum liquidated damages, prejudgment interest, costs and attorney's fees pursuant to NYLL § 663;
55. As to the **Third Cause of Action**, award Plaintiff all outstanding wages, including unpaid overtime wages, minimum wages, non-overtime wages due, wage deductions, plus maximum liquidated damages, maximum recovery for violations of NYLL 195(1) and NYLL 195(3), reasonable attorneys' fees, and costs of the action, pursuant to N.Y. Labor Law § 190 et seq. including § 198, and issue an injunction directing Defendant to comply with NYLL 195(1) and NYLL 195(3).
56. Award Plaintiff prejudgment interest on all monies due;
57. Award Plaintiff any relief requested or stated in the preceding paragraphs, but which has not been requested in the WHEREFORE clause, in addition to the relief requested in the wherefore clause;
58. Award Plaintiff such other, further and different relief as the Court deems just and proper.

Dated: Queens Village, New York

April 30, 2023

Respectfully submitted,

Abdul Hassan Law Group, PLLC

/s/ Abdul Hassan
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